



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/563,793

08/04/2006

Paul C. Kocher

2147.028US1

3031

31665 7590 07/07/2010

PATENT DEPARTMENT
ROVI CORPORATION
2830 DE LA CRUZ BOULEVARD
SANTA CLARA, CA 95050

EXAMINER

WRIGHT, BRYAN F

ART UNIT

PAPER NUMBER

2431

MAIL DATE

DELIVERY MODE

07/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,793	Applicant(s) KOCHER ET AL.	
	Examiner BRYAN WRIGHT	Art Unit 2431	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/2010, 4/28/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAIL ACTION

1. This action is in response to amendment filed 4/7/2010. Claims 30, 35, 38 and 53 are amended. Claims 30-53 are pending.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant's claims 35-37 and 46-50 are directed towards an "optical medium" however applicant's specification does not provide a proper antecedent basis.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant's claim 52 is directed towards a "machine readable medium" however applicant's specification does not provide a proper antecedent basis.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

Art Unit: 2431

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 8 and 9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending application 10/614765 claims 2, 12 and 16 hereinafter of Kocher (2) in view of Herzberg et al. (EP 0717337 and Herzberg hereinafter).

- Claims 2, 12 and 16 of Kocher (2) teaches receiving data including the digital content, first data processing instructions, the first data processing instructions corresponding to the digital content, and executing the first data processing instructions by using the computer language interpreter, the first data processing instructions configuring the computer language interpreter to: obtain a cryptographic value of the second data processing instructions; determine an authenticity of the second data processing instructions by using the cryptographic value; based on the authenticity, performing a first operation selected from a first group consisting of: inhibiting playback of at least a portion of the digital content, and enabling the access by the computer language interpreter to the memory of

Art Unit: 2431

the playback device, the access being performed by the computer language interpreter during execution of the second data processing instructions.

- Kocher (2) does not expressly teach a second data processing instructions such that a second data processing instructions, when executed by a computer language interpreter of the playback device, configuring the computer language interpreter to request an access to a memory of the playback device;,
- However these features are well known in the art and would have been an obvious modification of the system disclosed by Kocher (2) as introduced by secondary reference, Herzberg. Herzberg, discloses a real addressing mode or a protected addressing mode such that each mode provides an addressing scheme for accessing different areas of the microprocessor's memory. In this instance mode is a logic state invoked by the program to execute access to memory. Additionally, Herzberg teaches a memory controller for which includes logic for mapping addresses to and from CPU to particular areas of RAM. In this instance the CPU is considered to be equivalent to applicant's interpreter [col. 5, lines 55-58]). It is important to note that per applicant's original disclosure paragraph 137, a "second data processing instruction" is content code or program code;
- Therefore, given the teachings of Kocher's (2) ability to receive and transmit content data, a person having ordinary skill in the art at the time of the invention would have recognized the desirability and advantage of modifying Kocher (2) to

Art Unit: 2431

enhance playback device memory access by employing the well known feature of programming selectively accessing memory as described above by Herzberg.

This is a Provisional Double Patenting Rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 52 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Currently, claim 52 is drawn to a machine readable medium. The term “medium” however under the broadest interpretation includes a transitory signal for which the office considers to be non-statutory subject matter. As such the applicant is advised to include either in the claim language or in the specification subject matter reciting that the medium does not include a signal. Additionally, the Examiner recommends applicant replacing the term “machine” with “computer”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 30-39 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzberg et al. (EP 0717337 and Herzberg hereinafter) in view of Suzuki et al. (EP 0982725 and Suzuki hereinafter).

7. As to claims 30, 35, 38 and 53, Herzberg teaches a computer- implemented method of controlling playback of digital content by a playback device, the method comprising:

receiving data including the digital content (i.e., ...teaches receiving data multimedia programs [800, fig. 8; col. 6, lines 46-52]),

first data processing instructions (i.e., ...teaches a first portion comprising the media content and tables [col. 6, lines 46-52]), and second data processing instructions (i.e., ..teaches a module generates and embeds a validation structure (e.g., forensic data) into the multimedia [col. 1, lines 50-55]. The Examiner notes that applicant's

Art Unit: 2431

states that the second data processing instruction inserts forensic data into the media per claim 45. In applicant's original disclosure paragraph 137, applicant states that "content code" inserts forensic information into media. The Examiner respectfully submits that under the defined disclosure applicant's second data processing instruction is equivalent to applicant's "content code". As such the Examiner considers Herzberg disclosure of a module (e.g., code) for which embeds validation structure (e.g., forensic information) into media related data to be equivalent to applicant's "content code/second data processing instruction" function [col. 1, lines 50-55], the first data processing instructions corresponding to the digital content (i.e., ...teaches a first portion comprising the media content and tables [col. 6, lines 46-52]),

and executing the first data processing instructions (e.g., digital content/media) by using the computer language interpreter, the first data processing instructions configuring the computer language interpreter to (i.e., ...teaches executing the multimedia title (e.g., digital content) [col. 6, lines 40-60]):

the second data processing instructions, when executed by a computer language interpreter of the playback device, configuring the computer language interpreter to request an access to a memory of the playback device (i.e., ..the Examiner submits as asserted above, the "second data processing instruction" is program code. ...As such Herzberg teaches a real addressing mode or a protected addressing mode such that each mode provides an addressing scheme for accessing different areas of the microprocessor's memory. In this instance mode is a logic state invoke by program to execute access to memory. Additionally, Herzberg teaches a memory controller for

Art Unit: 2431

which includes logic for mapping addresses to and from CPU to particular areas of RAM). In this instance the CPU is considered to be equivalent to applicant's interpreter [col. 5, lines 55-58]).

obtain a cryptographic value (e.g., "so-obtained hash value reference") of the second data processing instructions (i.e., .. teaches obtaining value for comparison purposes [col. 9, lines 10-15] ..further teaches a cryptographic hash created (e.g., obtained) on the data object (e.g., second data processing instructions));

determine an authenticity of the second data processing instructions by using the cryptographic value (i.e., ... teaches authenticity is determined by comparison means [col. 9, lines 50-59]);

based on the authenticity, performing a first operation selected from a first group consisting of: inhibiting playback of at least a portion of the digital content (i.e., .. teaches based on a non-authenticated result halting processing (i.e., inhibit playing) [col. 14, lines 20-25]),

and enabling the access (e.g., allow data reading) by the computer language interpreter (i.e., run time environment) to the memory of the playback device, the access being performed by the computer language interpreter Herzberg teaches a memory controller for which includes logic for mapping addresses to and from CPU to particular areas of RAM). In this instance the CPU is considered to be equivalent to applicant's interpreter), during execution of the second data processing instructions (i.e., .. teaches if successful then allow data reading from storage means (e.g., memory, CD-ROM) [col. 14, lines 25-40] ..further teaches a real addressing mode or a protected addressing

Art Unit: 2431

mode. Each mode provides an addressing scheme for accessing different areas of the microprocessor's memory. Additionally, Herzberg discloses a memory controller includes the logic for mapping addresses to and from CPU to particular areas of RAM). The Examiner notes applicant's "second data processing instruction is computer code. See applicant's specification paragraph 137).

Herzberg teaches a Run Time Environment for executing prescribed functions however Herzberg does not explicitly teach applicant's claim limitation "interpreter" element. Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Herzberg ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Herzberg to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

2. As to claims 31 and 36, Herzberg teaches a computer-implemented method of where the first data processing instructions, in configuring the computer language interpreter to determine the authenticity, configure the computer language interpreter to perform a second operation selected from a second group consisting of: comparing the

Art Unit: 2431

cryptographic value to a reference value stored in the memory (i.e., ... teaches authenticity is determined by comparison means [col. 9, lines 50-59]), and verifying a digital signature corresponding to at least one of the first data processing instructions or the second data processing instructions (i.e., ... teaches verifying a digital signature [col. 14, lines 15-35]).

8. As to claims 32 and 39, Herzberg teaches a computer-implemented method of where the receiving of the data includes receiving at least some of the data from a media drive or via a network [fig. 3].

9. As to claim 33, Herzberg teaches a computer-implemented method further comprising storing information in the memory, the information representing at least one of: a payment referencing the digital content, a history of pay-per-view payments, a counter value, a duration of access, a spending limit, a pricing discount, a permission level, a privilege level, a security policy, a software update of the playback device, third data processing instructions to obtain the software update, a cryptographic key, or a digital signature (i.e., ... teaches the use of cryptographic key and digital signature [col. 13, lines 35-45]).

10. As to claims 34 and 37, Herzberg teaches a computer-implemented method of where the first data processing instructions, in configuring the computer language interpreter (i.e., run time environment), to inhibit the playback, configure the computer

Art Unit: 2431

language interpreter (i.e., run time environment) to perform a third operation selected from a third group consisting of: preventing the playback, disabling a rendering of the portion of the digital content, communicating an error message, communicating a first request to receive authentication data, communicating a second request to initiate an upgrade of the playback device, disabling a decryption of the portion of the digital content, and restricting the playback to a reduced quality level less than a maximum quality level of the digital content (i.e., ...teaches rendering no notification [col. 15, lines 39-41]).

Herzberg does not explicitly teach applicant's computer language interpreter claim limitation element. However at the time of applicant's original filing, the feature of a computer language interpreter used in a playback device environment was well known and would have been an obvious modification of Herzberg as disclosed by Holliman. Holliman discloses: a computer language interpreter (to provide application support using interpreter capability [par. 13]).

Therefore given Herzberg ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Herzberg to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Holliman.

Art Unit: 2431

Claims 40-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher et al. (US Patent No. 6,289, 455 and Kocher hereinafter) in view of Suzuki.

11. As to claims 40 and 51, Kocher teaches an apparatus comprising: a media interface to receive digital content and first data processing instructions (i.e., ...teaches playback devices receives content [col. 9, lines 15-20]), the first data processing instructions corresponding to the digital content [col. 9, lines 15-20]; determine a security risk (e.g., audit process) of the apparatus (i.e., .. teaches accessing security [col. 12, lines 15-25]);

identify second data processing instructions as a software countermeasure associated with the security risk, the identifying being based on the security risk [col. 11, lines 30-40]; and initiate an execution of the second data processing instructions on the apparatus [col. 4, lines 14-20].

Kocher does not explicitly teach applicant's claim limitation "interpreter" element. Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application

Art Unit: 2431

support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

12. As to claim 41, Kocher teaches a computer-implemented method where the second data processing instructions include a specific instruction encoded as native code of the playback device (i.e., ... teaches receiving code updates [co1.24, lines 50-65]).

11. As to claim 42, Kocher teaches a computer-implemented method of where the first data processing instructions, configure the computer language interpreter to determine an authenticity of the second data processing instructions [520, fig. 5]. Kocher does not explicitly teach applicant's claim limitation "interpreter" element. Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

Art Unit: 2431

13. As to claim 43, Kocher teaches a computer-implemented method of where the first data processing instructions, in configuring the computer language interpreter (i.e., playback device) to determine (e.g., audit process) the security risk, configure the computer language interpreter to detect a presence of unauthorized software on the playback device (i.e., ... teaches an audit process for determining risk related issues such as unauthorized code [col. 12, lines 15- 25]).

Kocher does not explicitly teach applicant's claim limitation "interpreter" element.

Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

14. As to claim 44, Kocher teaches a computer-implemented method of where the first data processing instructions, configure the computer language interpreter (i.e., playback device) to initiate a reception of at least some of the second data processing

Art Unit: 2431

instructions from a media drive or via a network (i.e., ... teaches reception via network [col. 9, lines 10-15]).

Kocher does not explicitly teach applicant's claim limitation "interpreter" element.

Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

15. As to claim 45, Kocher teaches a computer-implemented method where the second data processing instructions, when executed on the playback device [col. 9, lines 15-20], configure the playback device to modify at least some of the digital content with a forensic mark (e.g., control message) [col. 9, lines 20-21]).

16. As to claims 46 and 52, Kocher teaches a optical medium comprising: digital content [col. 8, lines 20-30]; and first data processing instructions corresponding to the

Art Unit: 2431

digital content (i.e., ... teaches receiving digital content [col. 9, lines 15-20]), the first data processing instructions (e.g., code), when executed by a computer language interpreter of a playback device (i.e., ... teaches receiving code updates [col.24, lines 50-65]), configuring the computer language interpreter to: determine a security risk (e.g., audit process) of the apparatus (i.e., .. teaches accessing security [col. 12, lines 15-25]); identify second data processing instructions as a software countermeasure associated with the security risk, the identifying being based on the security risk [col. 11, lines 30-40]; and initiate an execution of the second data processing instructions on the apparatus [col. 4, lines 14-20].

Kocher does not explicitly teach applicant's claim limitation "interpreter" element.

Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

Art Unit: 2431

17. As to claim 47, Kocher teaches a optical medium where the second data processing instructions include a specific instruction encoded as native code of the playback device (i.e., ... teaches receiving code updates [co1.24, lines 50- 65]).

18. As to claim 48, Kocher teaches a optical medium where the first data processing instructions, when executed by the computer language interpreter (i.e., playback device), configure the computer language interpreter to determine an authenticity of the second data processing instructions [520, fig. 5].

Kocher does not explicitly teach applicant's claim limitation "interpreter" element.

Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

19. As to claim 49, Kocher teaches a optical medium where the first data processing instructions, in configuring the computer language interpreter (i.e., playback device) to

Art Unit: 2431

determine (e.g., audit process) the security risk, configure the computer language interpreter to detect a presence of unauthorized software on the playback device (i.e., ... teaches an audit process for determining risk related issues such as unauthorized code [col. 12, lines 15-25]).

Kocher does not explicitly teach applicant's claim limitation "interpreter" element.

Applicant defines an "interpreter" to be an execution environment for running commands. See applicant's paragraph 36. As such at the time of applicant's original filings Suzuki disclosed using an interpreter for executing instruction commands for the purpose of rendering content to a user via a playback device. See Suzuki paragraph 66.

Therefore given Kocher ability to control content playback, a person having ordinary skill in the art would recognize the advantage of modifying Kocher to enable application support with the well known feature of a script language interpreter (e.g., computer language interpreter) as disclosed by Suzuki.

20. As to claim 50, Kocher teaches a optical medium where the second data processing instructions, when executed on the playback device [col. 9, lines 15- 20], configure the playback device to modify at least some of the digital content with a forensic mark (e.g., control message) [col. 9, lines 20-21]).

Response to Arguments

Examiner Remarks – 103 Rejection Herzberg in view of Holman

It is important to note that the applicant recites in claim 45 that the “second data processing instruction” inserts forensic information into the media. In paragraph.137 of applicant's original disclosure the applicant states that 'content code' (e.g., program module) inserts forensic information into media. Therefore, the Examiner respectfully submits that applicant's “second data processor instruction” is equivalent to “content code”. The Examiner notes that applicant defines “content code” in paragraph 137 as “code” (e.g., program code) loaded by the boot portion of the machine.

Applicant alleges deficiency on the part of Herzberg with respect to applicant's teachings of:

“the digital content, the second data processing instructions, when executed by a computer language interpreter of the playback device, configuring the computer language interpreter to request an access to a memory of the playback device”;

The Examiner contends Herzberg contemplates said teaching. Herzberg discloses a real addressing mode or a protected addressing mode. Each mode provides an addressing scheme for accessing different areas of the microprocessor's memory. In this instance Herzberg is disclosing that logic (e.g., program logic) exists to allow the access to memory locations. Additionally, Herzberg teaches a possessing memory controller. The memory controller includes logic for allowing addresses mapping (e.g.,

Art Unit: 2431

access) to and from CPU to particular areas of RAM. In this instance the CPU is equivalent to applicant's interpreter [col. 4, lines 55-58]

Additionally, the applicant alleges deficiency on the part of Herzberg and Holliman in view of the following claim limitation elements: regards to applicant's remarks of:

“...obtaining this cryptographic value and determining an authenticity of such second data processing instructions by using the cryptographic value’

The Examiner contends Herzberg discloses a cryptographic hash value is created or calculated”. See Herzberg "Summary of Invention". Additionally, Herzberg discloses determining if the program (e.g., "second data processing instruction"/ "Content Code") is authorized using the cryptographic hash on each of the selected data objects. See Herzberg col. 2, lines 23-27.

.

Examiner Remarks – 103 Rejection - Kocher in view of Holman

With regards to applicant's statement regarding "determining a security risk of the playback device", the Examiner contends prior art reference Kocher teaches risk management techniques as it pertains to protecting against privacy in relation to the device rendering the content. See prior art reference Kocher column 13, lines 1-10.

With regards to applicant's statement regarding "Moreover, each of independent claims 40, 46, 51, and 52 recites, in part, "identify[ing] second data processing instructions as a software countermeasure associated with the security risk, the

Art Unit: 2431

identifying being based on the security risk', the Examiner contends prior reference Kocher teaches security measures can be added in the CRU, playback device, etc. and can help by increasing the effort required for an attack. Tamper evidence (in addition to tamper resistance) in the CRU can help to discourage attacks and prosecute pirates. See Kocher, column 35-45.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN WRIGHT whose telephone number is (571)270-3826. The examiner can normally be reached on 8:30 am - 5:30 pm Monday -Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/563,793
Art Unit: 2431

Page 22

/BRYAN WRIGHT/
Examiner, Art Unit 2431

/William R. Korzuch/
Supervisory Patent Examiner, Art Unit 2431